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Treaty Revision In China

THE capture of Peking on June 5 was a fact of great international significance. It brought the powers face to face with a nominally united China. In its manifesto on June 15 the Nationalist Government pointed out that unification meant recognition, which in turn implies active relations for the settlement of outstanding problems. Chief among these is the problem of China's treaty relations with the foreign powers.

While it is true that the biggest problem facing the new Government is the maintenance of unity and the gradual increase of stability through measures of reconstruction, the key to reconstruction is finance, which in turn is dependent upon a revision of the treaties. Accordingly the new Nationalist Government has lost no time in demanding a revision of the "unequal" treaties. On July 7, Dr. C. T. Wang, Minister of Foreign Affairs, issued the following declaration reaffirming the Government's determination to proceed immediately with the abrogation of all unequal treaties:

> "The Nationalist Government, with a view to adapting themselves to present-day circumstances and with the object of promoting the welfare of and the friendly relations between China and different countries, has always considered the abrogation of all the unequal treaties and the conclusion of new treaties on the basis of equality and mutual respect for territorial sovereignty as the most pressing problem at the present time. These aims have been embodied in declarations repeatedly made by the Nationalist Government.
>
> "Now that the unification of China is an accomplished fact, it is the task of the Nationalist Government to make every effort to fully realize these aims. While they will continue to afford protection to foreign lives and property in China, according to law, the Nationalist Government hereby make the following specific declaration with regard to all the unequal treaties:
>
> 1. All the unequal treaties between the Republic of China and other countries, which have

already expired, shall be *ipso facto* abrogated, and new treaties shall be concluded.

2. The Nationalist Government will immediately take steps to terminate, in accordance with proper procedure, those unequal treaties which have not yet expired, and conclude new treaties.

3. In the case of old treaties which have already expired, but which have not yet been replaced by new treaties, the Nationalist Government will promulgate appropriate interim regulations to meet the exigencies of such a situation."

The above statement represents a unilateral denunciation of the treaties. China defends its position under the principle of *rebus sic stantibus*, which provides "that when the essential conditions in which a treaty was concluded have changed, the obligations in that treaty which still remain to be executed have lost their force."

The principle, dangerously elastic in application, is open to abuse. The party denouncing the treaty usually constitutes itself the sole judge of the circumstances justifying its action. According to most authoritative contemporary writers the principle merely gives to the dissatisfied party a right to demand revision or termination of a treaty or its replacement by another. If after doing so the request for revision, termination or replacement is refused and the dissatisfied party still insists that in consequence of changed conditions the terms of the treaty have become grossly unequal, then it may be justified in repudiating or denouncing its treaty. The action taken by China would appear to be based upon such an interpretation of the principle.

The complaints concerning unequal treaties voiced by the politically articulate body in China fall into four major classifications: (1) the unilateral treaty provisions, (2) tariff restriction and supervision, (3) extraterritorial jurisdiction and (4) the foreign "concessions" and "settlements." This report attempts to present in very brief form the historical basis of the first three questions, the efforts made in the past to revise the treaties, the arguments offered by the Chinese against the treaty provisions and the objections raised by the foreign powers to proposed changes. The fourth question of foreign "concessions" and "settlements" will be treated in a later issue of the *Information Service*. The last section of the report reviews the political changes which have come about during the last two years, and notes the steps taken by the northern and southern Chinese Governments toward a recovery of that freedom and sovereignty which has been limited by treaty restrictions.

THE UNILATERAL MOST-FAVORED-NATION CLAUSE

The most-favored-nation clause, embodied in so many of China's treaties, is one of the basic factors in China's relations with the treaty powers[1] and accordingly requires preliminary attention. Until one takes into account the operation of this clause, a clear understanding of the treaty relations between China and the other powers is impossible. In simple terms, the inclusion of the most-favored-nation clause in a treaty between China and a foreign power entitles that power to treatment equal to that which China accords to the nation she most highly favors. The treaty power thereby procures not only the privileges and immunities which are specifically granted to it, but also all privileges and immunities of a like nature granted by China to other powers.

The most-favored-nation clause made its appearance in China early in the history of its treaty relations with the western powers. It was first introduced in modified form in the Supplementary Treaty of 1843 with Great Britain, of which Article VIII provided:

"The Emperor of China having been graciously pleased to grant to all foreign countries whose subjects, or citizens, have hitherto traded at Canton, the privilege of resorting for purposes of trade to the other four ports of Foochow, Amoy, Ningpo, and Shanghai, on the same terms as the English, it is further agreed, that should the Emperor hereafter, from any cause whatever, be pleased to grant additional privileges or immunities to any of the subjects or citizens of such foreign countries, the same privileges and immunities will be extended to and enjoyed by

1. The term "treaty powers" in connection with China is generally used to designate those powers which have extraterritorial privileges, not all of the countries which have treaty relations with China.

British subjects; but it is to be understood that demands or requests are not, on this plea, to be unnecessarily brought forward."

Clauses similar to this, and even broader in scope, were soon after included in other treaties with the powers.

RESTRICTIONS IMPOSED BY THE CLAUSE

China objects to the clause primarily because it is unilateral in nature, that is, while the treaty powers receive most-favored-nation treatment from China they do not, speaking broadly, undertake to grant the same treatment in return.

How complicated in nature China's external relations have become as a result of this clause alone is illustrated by the fact that, in order to determine the treaty rights which a particular nation has in China, it is first necessary to ascertain the privileges or immunities of a commercial or economic nature which have been granted to the other treaty powers. Furthermore, the interlocking action of the most-favored-nation clause has presented a major obstacle to China's efforts to effect a revision of its treaties. For example, the Mackay Treaty of 1902 with Great Britain, and the similar treaties concluded in 1903 with the United States and Japan, and in 1908 with Sweden, which provided for tariff revision and for the gradual relinquishment of extraterritorial privileges, never became effective simply because they were conditioned upon a clause providing that all powers entitled to most-favored-nation treatment in China should enter into similar engagements and this agreement was not achieved.

Thus, China today is placed in the anomalous situation of being compelled to obtain the consent of all the treaty powers before she can effect with one the revision of any provisions guaranteed to all. It is this necessity of obtaining unanimous consent, coupled with the unilateral aspect of the most-favored-nation principle, which has furnished the ground for so much of the recent agitation against "unequal treaties."

In this connection it is of interest that even the new tariff treaty signed on July 25 of this year between the United States and China is conditioned by a clause stating that "each of the high contracting parties shall enjoy in the territories of the other, with respect to the above specified and any related matters, treatment in no way discriminatory as compared with the treatment accorded to any other country." Inasmuch as this clause is reciprocal in nature one objection is removed, but nevertheless until China obtains unanimous consent from the treaty powers to tariff autonomy she is prevented from changing her rates, even in regard to the United States.

A very limited number of China's treaties contain the most-favored-nation clause in its conditional form, that is, that the privileges extended by China are to be enjoyed by other nations only on condition of like compensation being made. In general, however, China's treaty obligations have not been so carefully guarded when granting most-favored-nation treatment, and in most of the treaties the benefits of the clause are obtained without compensation.

RECIPROCAL TREATMENT ACCORDED IN NEW TREATIES

While in practically each one of the early treaties unilateral most-favored-nation treatment was granted by China, in several of the later treaties there appear provisions for most-favored-nation treatment in China's favor. In 1864 Spain accorded most-favored-nation treatment to China in trade with the Philippine Islands; in 1868 the United States and China reciprocally pledged most-favored-nation treatment "in regard to privileges of travel, residence and access to and creation and maintenance of educational institutions." Reciprocal most-favored-nation treatment in respect to merchant ships and customs duties was pledged in the China-Peru treaty of 1874 and in the China-Brazil treaty of 1881. In the China-France treaty of 1886 most-favored-nation treatment was granted to Chinese in Annam; and full reciprocal most-favored-nation treatment in the China-Mexico treaty of 1899. By the terms of a treaty concluded with Switzerland in 1918, China obtained reciprocal most-favored-nation treatment in regard to the treatment of diplomatic and consular officers. Later treaties concluded with

Bolivia (1919), Persia (1920), Germany (1921), Russia (1924), Austria (1925) and Poland (1928) have been drawn up in increasing measure in accordance with the principles of equality and reciprocity. It is of interest to note that the Austrian treaty included in it a number of provisions which, since they are hardly applicable to Austria, it would seem were designed by China to serve as a model for the bi-lateral treaties which China hopes eventually to substitute for the present "unequal treaties."[2]

Today Nationalist China demands that the most-favored-nation clauses in the old treaties be rewritten, and that in their place new clauses be drawn up, equal and reciprocal in nature, and with none of the interlocking aspect which has frustrated her attempts at revision in the past. Unconditional most-favored-nation treatment will no longer be granted.

TARIFF RESTRICTION AND SUPERVISION

The Chinese demand for tariff autonomy has been pressed by North and South alike. It is a subject on which the Chinese people appear to be united, and as the problem of obtaining additional revenue to finance the reconstruction program of the government is the major problem in China, the solution of the tariff problem, upon which increased revenue largely depends, necessitates immediate attention.

China objects to the present tariff system on the following grounds:

(1) It constitutes a restriction on China's freedom of action and an infringement of her sovereignty.

(2) It is a serious impediment to the Chinese foreign trade and to China's industrial development. This is because the provisions are unilateral, *i. e.*, Chinese produce on entering other countries is subject to the maximum rates, but foreign goods imported into China enjoy the exceptionally low rate of five per cent *ad valorem*. The necessity of levying uniform rates, even on articles such as machinery and raw materials necessary for Chinese industries, likewise greatly handicaps infant Chinese industries.

(3) It is not scientific. A uniform rate for all kinds of commodities without differentiating between luxuries and necessities ignores the economic and social, as well as the fiscal, needs of the Chinese people.

(4) Maintenance of the present tariff régime means a continued loss of revenue for the government, because under the very low rate imposed upon China, and because a large part of the Customs revenue is pledged to meet various foreign loans secured thereon, the amount available to the government is insufficient to meet its needs.

(5) Through the operation of the most-favored-nation clause the unanimous consent of all the treaty powers is necessary to effect even the slightest revision of the tariff. As each country desires to protect its own interests, which vary according to the merchandise it exports, it not infrequently attaches conditions to Chinese efforts to increase the tariff which serve to destroy the possibility of obtaining the necessary unanimous consent. On the other hand, when China grants a concession or privilege it is at once claimed by all the powers by virtue of the most-favored-nation clause.

(6) After 1911 the customs revenue was deposited in foreign banks and the money was not readily accessible to Chinese customers for legitimate purposes of commerce and trade, with the result that money from time to time became scarce and tight in leading commercial centers of China.

In answer to these objections the foreign powers have on a number of occasions expressed grave doubts as to the advisability of granting China an increased revenue which would, they predicted, find its way into the hands of the various military commanders and thus prolong internal conflict. Certain of the powers have wished to impose upon China the condition that the increased revenues should be devoted to specific purposes, such as the payment of outstanding debts to foreign financial interests, or to purely productive, rather than administrative, enterprises.

Inasmuch as the classes of goods imported into China vary widely, from small cheap articles produced in Japan to heavy industrial machinery produced in America, it is obvious that an increase in import duties would affect some countries more seriously than others. It is this factor, together with

2. *Survey of International Affairs*, Vol. II, 1925. (Royal Institute of International Affairs.) p. 330.

the necessity for obtaining unanimous consent, which has proved the biggest stumbling block for China.

HISTORICAL BASIS OF TARIFF TREATIES

China's autonomy in the matter of tariff was first definitely limited by the Treaty of Nanking (1842) which concluded the "Opium War." This treaty was the first to place the trading relations between China and the West on a legal basis. By its terms China entered into an agreement with Great Britain to open five ports to foreign trade and to publish a "fair and regular tariff of export and import customs and other dues." Upon payment of these sums and a further amount to cover transit dues, it was agreed that British merchandise should become free to be conveyed by Chinese merchants to the interior of China.

During the next year, 1843, the governments of China and Britain agreed upon a tariff schedule on the basis of approximately five per cent *ad valorem* duties on imports and exports. It was likewise agreed that dues on goods in inland transit should be levied at the moderate scale prevailing at that time.

The inland transit dues were later complicated by the imposition in certain southern provinces, during the early years of the Taiping Rebellion, of extra provincial taxes under the name of *likin*. These were levied upon merchandise in transit inland, as a means of providing extra revenue. The new tax proved so productive that its imposition was rapidly imitated in other provinces throughout China. The charges levied under that name have since been multiplied until the term today is used to describe a great variety of taxes which are collected upon internal trade.

New treaties were drawn up at Tientsin in 1858 which provided for revised tariff schedules and arranged for the commutation of transit dues, including *likin*, by the payment of a single charge at the rate of 2½ per cent *ad valorem*. The new schedules comprised specific rates of duty based on five per cent of the value of the goods at that time. The tariff rules adopted in accordance with the provisions of the treaties of 1858 also introduced a legal basis for the Customs Administration, which is covered in a later section of this report.

No further important changes were made in either the tariff schedules or tariff rules until, in pursuance of the Boxer Protocol of 1901, the schedules were revised in 1902. The rates were calculated, however, on the average of prices prevailing from 1897-1899, and the revenue collected according to this tariff was hardly sufficient to meet the obligations of the Boxer indemnity.[2a]

In 1912 another attempt was made to bring the tariff more in accord with actual prices, but it took six years of negotiation before the revision was finally effected in 1918. This schedule remained in force until 1922. While the purpose of this revision was to increase the rate to an effective five per cent, it actually yielded only 3½ per cent.[2b]

CHINA'S EFFORTS TO RECOVER TARIFF AUTONOMY

In recent years China has made a number of efforts to reform the restrictive tariff system imposed upon her, but has met with little success. In 1902 Britain concluded with China the Mackay Treaty providing for the abolition of *likin* and other transit duties, and for the raising of existing import duties from 5 per cent, plus the 2½ per cent to cover transit, to 12½ per cent, and export duties to 7½ per cent. Similar treaties were concluded during the next year with the United States and Japan, and in 1908 with Sweden; but as the other treaty powers did not follow suit, and as the provisions of these treaties were conditioned upon the conclusion of similar agreements with the other powers concerned, including those entitled to most-favored-nation treatment, these treaties have never become effective.

During the Paris Peace Conference the Chinese delegation presented a program for the restoration of tariff autonomy by successive stages, but the program was rejected.

At the Washington Conference the Chinese delegation presented a number of specific proposals. Through the terms of the Nine-Power Pact it was agreed that the tariff

2a. Willoughby, W. W., *Foreign Rights and Interests in China*, p. 789.
2b. *Idem.*

schedules on imports should be revised by a Tariff Revision Commission to meet at Shanghai "as soon as practicable," and prepare a new schedule which would produce an effective five per cent *ad valorem;* and that a Special Tariff Conference should be held to make arrangements for the speedy abolition of *likin,* to authorize the surtaxes provided by the treaties of 1902 and 1903, and to consider interim provisions for import surtaxes of 2½ per cent *ad valorem* on ordinary goods and five per cent *ad valorem* on luxuries. The Tariff Revision Commission met at Shanghai in 1922 and prepared a revised tariff schedule. But owing to the Gold Franc Controversy between China and France over the manner of payment of the Boxer Indemnity, France declined to ratify the Nine-Power Pact until August, 1925. The Special Tariff Conference was not convened, therefore, until October, 1925.

SCOPE OF THE SPECIAL TARIFF CONFERENCE

According to the provisions of the Washington treaty the Conference was authorized to:

1. Prepare the way for the speedy abolition of *likin* and fulfillment of the other conditions laid down in specified articles of the treaties of 1902 and 1903 [as described above].

2. Consider the interim provisions to be applied prior to the abolition of *likin* and the fulfillment of the other conditions.

3. Draft rules to govern future revisions of the schedule of import duties.

4. Take steps to give practical effect to the principle of uniform rates of customs duty at the frontiers.

5. Formulate a plan for the constitution of a Board of Reference.

At the opening plenary session of the Conference the Chinese delegation presented five proposals which may be summarized as follows:

1. That the powers agree to the removal of the tariff restrictions contained in their existing treaties with China.

2. That China abolish *likin* simultaneously with the enforcement of China's National Tariff Law, which would take effect not later than January 1, 1929.

3. That previous to the enforcement of the National Tariff Law, an interim surtax of five per cent be levied on ordinary goods, a 30 per cent surtax on "grade A" luxuries, including wines and tobacco, and a 20 per cent surtax on "grade B" luxuries—these in addition to the present five per cent *ad valorem* tariff.

4. That the collection of these interim surtaxes begin three months from the date of the signature of the agreement reached by this conference.

5. That decisions relative to the above four articles be carried into effect from the date of the signature of the agreement.

After the opening plenary session the Conference worked for several months in subcommittees, the intention being that the conclusions of the sub-committees should be reported for final action in a plenary session. As a matter of fact, however, no other plenary session was held. Owing to the disturbed conditions created by civil war in North China and to the complete breakdown of the government under Tuan Chi-jui, all but two of the Chinese delegates and commissioners had left Peking by early April of 1926. From that time until the conference adjourned in July, 1926, it was impossible to have other than informal meetings among the delegates.

Attempts to revive the Conference were made late in July by the Regency Cabinet which followed the breakdown of Tuan's Government, but as the Kuominchun and the Nationalist Government at Canton had both declared in uncompromising terms that they would not recognize any agreement concluded with the Peking Government, the delegates felt that it was futile to reopen negotiations with the unrecognized Peking Government.

DISAGREEMENTS AMONG THE LEADING POWERS

While it is true, therefore, that the Conference adjourned because the Chinese delegates had left Peking and there was no recognized government with which the foreign delegates could deal, some observers place a certain amount of blame on the delegates because they were unable to agree among themselves before it became impossible to continue the meetings. Japan, for example, was willing to grant China complete tariff autonomy only if assured that China would sign a treaty with Japan fixing the duties

upon certain Japanese imports for a term of years at specified *ad valorem* percentages. This position is explained in part by the fact that Japan's commercial and industrial interests would be seriously prejudiced by increased duties on Japanese goods imported into China. Great Britain's interests would also be affected by increased import rates on high grade piece goods, sugar and woolens. The United States would probably suffer less than the other major powers, materially, by granting full tariff autonomy to China.

The powers also experienced difficulties in regard to the commodities which should be classed as luxuries, and the amount of surtax which China should be permitted to levy. There was considerable discussion, too, concerning the purposes to which China should pledge the increased revenues obtained by the surtaxes. While it was generally agreed that some of the proceeds should be devoted to the payment by China of some of the foreign loans which were in default, no agreement was reached as to what loans should receive the benefit of such a pledge. Japan, for example, desired to include the Nishihara loans, which were estimated at between 225,000,000 and 380,000,000 yen.[3] These had been made to northern military leaders who controlled the Peking Government in 1918, and had been spent either on their own enrichment or for military purposes in the war with the south. To secure these loans the Peking Government had in some cases illegally mortgaged assets over which it had no control, and in other cases pledged treasury bonds which had depreciated to an absurd value. The other powers were unwilling to include the Nishihara loans.[4] Great Britain, on the other hand, strongly urged that a considerable portion of the revenues should be devoted to constructive public works and to railway development.

3. *Survey of International Affairs*, Vol. II, 1925. (Royal Institute of International Affairs), p. 374.

4. On August 15, 1924, the National City Company of New York made a three-year loan of $22,000,000 to the Industrial Bank of Japan (one of the banks concerned in the Nishihara loan to China) receiving as security 6% gold debenture notes unconditionally guaranteed by the Japanese Government. According to the *Japan Chronicle*, July 28, 1927, an American loan amounting to $22,000,000 which had been used by a Japanese bank to secure part of the Nishihara loans, fell due in August, 1927. Inasmuch as the Chinese had not paid the loans the bank was not covered. In order to protect it, the Japanese Diet passed an act guaranteeing the payment of the Nishihara loans. On August 9, according to the *Japan Chronicle* of August 18, 1927, the Japanese Department of Finance handed to the bank concerned 52,000,000 yen in bonds, with which it met the obligations in America.

RESOLUTION CONCERNING TARIFF LAW AND LIKIN

A further point of difference in the Conference had to do with the abolition of *likin* and whether it should be regarded as "integrally related to the undertakings upon the part of the foreign Powers to surrender their treaty rights of control over China's customs, so that one promise should be regarded as the reciprocal of the other, or whether the two undertakings were to be regarded as independent of each other."[5] The latter was the Chinese point of view. As finally agreed upon in the sub-committee on tariff autonomy the declarations regarding tariff autonomy and the abolition of *likin* read as follows:

> "The delegates of the Powers assembled at this Conference resolve to adopt the following proposed Article relating to tariff autonomy with a view to incorporating it, together with other matters, to be hereafter agreed upon, in a treaty which is to be signed at this Conference:
>
> "The Contracting Powers other than China hereby recognize China's right to enjoy tariff autonomy; agree to remove the tariff restrictions which are contained in existing treaties between themselves respectively and China; and consent to the going into effect of the Chinese National Tariff Law on 1st January, 1929.
>
> "The Government of the Republic of China declares that *likin* shall be abolished simultaneously with the enforcement of the Chinese National Tariff Law; and further declares that the abolition of *likin* shall be effectively carried out by the First Day of the First Month of the Eighteenth Year of the Republic of China (1st January, 1929)."

This resolution is considered the one constructive act of the Conference. Although the Conference did not succeed in drawing up a treaty such as the resolution calls for, and the resolution can therefore be presumed to have no legal standing, its adoption in Committee has been popularly interpreted by the Peking Government and the Nationalist Government as an admission by qualified representatives of the foreign powers of China's right to enjoy tariff autonomy[6] and by their subsequent action the foreign powers have tacitly acknowledged this contention.

5. Willoughby, W. W., *Foreign Rights and Interests in China*, Vol. II, p. 840.

6. The action since taken under this premise by the governments of the north and south will be discussed in a later section of this report under "Recent Progress in Treaty Revision." See p. 311.

IMPORTANCE OF THE ABOLITION OF LIKIN

A very close relationship exists between the exercise of tariff autonomy by China and the abolition of *likin*. Although by the Treaty of Tientsin (1858), it was agreed that a fixed sum to cover transit dues might be paid at the port of entry or at the first *likin* station, which would exempt goods from further transit dues, this arrangement did not succeed in eliminating the friction between foreign traders and provincial authorities, who were able to present hindrances which it has been practically impossible for traders to overcome.

Due to the lack of a central authority to prevent it, a good many other taxes, in addition to *likin* proper, have been collected on goods in transit in recent years. These others are frequently classed as *likin*, but are more correctly termed "consumption" taxes. It should be understood, however, that these provincial taxes upon goods in transit in China are levied upon all goods, and are not especially applicable to imported goods or goods intended for exportation.

Thus *likin* has presented a great obstacle to the healthy development of both domestic and foreign trade. Furthermore, its value to the national treasury has become practically nil, since the full revenue almost never reaches the hands of the central governmental authorities, being retained by the provinces for administrative or military purposes.

The foreign powers in the treaties of 1902 and 1903, and at the Washington Conference, while expressing their willingness to grant China complete tariff autonomy, wished to make it conditional upon the abolition of *likin;* the Chinese, on the other hand, while promising to abolish *likin*, have tried to dissociate it from the issue of tariff autonomy. The resolution agreed upon at the Special Tariff Conference in 1925 represented a compromise between these two points of view, inasmuch as China agreed to abolish *likin* simultaneously with the promulgation of a National Tariff Law, which was to take effect on January 1, 1929, on which date the powers consented to the full exercise by China of its right of tariff autonomy.

For China, the domestic aspect of the problem faced in the abolition of *likin* is the most difficult. To abolish *likin* without providing adequate means of compensating the provincial treasuries for the enormous revenues of which they would be deprived would call forth strong opposition.[7] It necessitates a government stronger and sounder in economic policy than has existed in recent years.

ORIGIN OF MARITIME CUSTOMS ADMINISTRATION

Closely interwoven with the whole question of foreign restriction in matters of tariff is the problem presented by the foreign-administered Maritime Customs. The term "Maritime Customs" has come into general and official use to designate the customs levied on foreign imports and exports as distinguished from the native customs levied on domestic trade, although as a matter of fact some of the native customs offices are today administered in connection with the foreign or maritime customs.[8]

The origin of the Chinese Maritime Customs Administration dates back to the days of the Taiping Rebellion when, in 1853, because the Chinese city of Shanghai had been captured by the rebels and the customs house closed, the foreign consuls arranged for the collection of duties and turned them over to the Chinese officials. The next year the British, American and French consuls were asked by the Chinese to continue their services, and they entered into an agreement with the Shanghai Taotai for the establishment of a board of foreign inspectors to be appointed by the Taotai for the administering of the customs at Shanghai. Four years later a further agreement containing Rules

7. The total *likin* revenue today is estimated to be almost $70,000,000 a year. No exact statistical computation is really possible under present conditions.

8. Native customs which have existed in China from earliest times are distinct from the Maritime Customs. They deal with domestic cargo and are controlled by the Central Government and their proceeds in theory at least fall into its treasury. They are not to be confused with *likin*, levied on all goods in inland transit. They may be divided into three classes: (1) the inland customs; (2) the maritime customs at places further distant than fifty *li*—*i. e.*, about sixteen miles—from a treaty port; and (3) maritime customs at ports within fifty *li* of a treaty port and since 1901 controlled by the Maritime Customs service.

of Trade was drawn up at Shanghai between Great Britain and China. This stipulated that the Chinese High Commissioner of Customs could of his own choice appoint a foreign subject to assist him in the administration of the customs revenue and other matters connected with commerce and navigation. These agreements provide the legal foundation of the Maritime Customs Administration, which today collects duties on imports and exports at all the treaty ports of China and also duties on the coasting trade in foreign built bottoms, whether Chinese or foreign owned; tonnage dues on shipping; transit duties exempting foreign imports from further taxation on removal inland; and *likin* on foreign opium.[8a]

In 1898, during the course of an exchange of notes between the British Minister and the Chinese Foreign Office, the latter gave to Great Britain the assurance that so long as British trade predominated in China's total foreign trade, the Inspector-General of Customs should be a British subject.

In the Boxer Protocol of 1901, the balance of the customs revenues, after payment of previous charges, was made first security for the Boxer Indemnity bonds. Two loan agreements concluded between China and foreign powers during the latter part of the nineteenth century contain provisions to the following effect:

> "The administration of the Imperial Maritime Customs of China shall continue as at present constituted, during the currency of this loan."[9]

Thus foreign administration of the customs revenues has been stabilized for the period of these loans. In the case of the contract quoted from, the loan was not redeemable before its expiring date, thirty-six years later. China was, therefore, prevented during that period from altering the existing system of foreign administrative control of the Maritime Customs.

RELATION TO THE CHINESE GOVERNMENT

It should be borne in mind that, while the Maritime Customs is under the immediate control of a foreigner possessing almost autocratic administrative powers, the service yet remains a branch of the Chinese Government. Although the Chinese Government until last year has never attempted to interfere with appointments within the service or to dictate administrative policies, the orders issued by the Inspector-General must nevertheless conform with the commands of the Government, and all receipts pass immediately into the custody of the banks designated for the purpose, without going through the hands of either the Inspector-General or the Commissioners in charge of the custom houses at the various treaty ports.[10] Originally the receipts were deposited in the Chinese Customs Banks. After the Revolution of 1911, they were transferred in accordance with an agreement between the Chinese Government and the Diplomatic Body to specified foreign banks—the Russo-Asiatic Bank, the Deutsch-Asiatische Bank, and the Hongkong and Shanghai Bank. The name of the Deutsch-Asiatische Bank was deleted in March, 1917, and in September, 1926 the Russo-Asiatic Bank failed and withdrew. Since then the revenues have been deposited solely in the Hongkong and Shanghai Bank, a British bank. The Chinese and certain of the foreign powers, especially Japan, whose trade in the last few years has rivalled Great Britain's, have offered many objections to this practice.

Two features of the Administration deserve special attention. The first is the Inspector-General's absolute power of appointment and dismissal. This results in a system, highly integrated and remarkably efficient, which has contributed very largely to the credit standing of the Chinese Government in its loan obligations. The second feature relates to the part filled by Chinese. Chinese object because they have until very recently been excluded from all the higher branches of the system which, after all, is not foreign but a branch of their own government;[11] and because Chinese salaries are

8a. Willoughby, W. W., *Foreign Rights and Interests in China*, Vol. II, p. 770. *China Year Book*, 1928, p. 1064.

9. Willoughby, W. W., *Foreign Rights and Interests in China*, Vol. II, p. 985.

10. *Ibid.*, p. 771.

11. "Out of 100 Deputy Commissioners, 60 are British; and out of 3,219 customs employees one-fourth is British; and another one-fourth is foreigners of different nationalities and the rest are Chinese, most of whom are of low rank." (*China Weekly Review*, March 3, 1928, p. 9.) *The Collection and Disposal of the Maritime and Native Customs Revenue since the Revolution of 1911*, by Stanley F. Wright, lists the Chinese personnel in June, 1926 at 7,453 and foreign personnel at 1,231. These figures include both Indoor and Outdoor Staff. Apparently the Outdoor staff was not included by the author of the first statement.

so very much lower than those paid to the foreigners. The reasons given by the foreign Administration for such discrimination are a lack of willingness on the part of the Chinese to assume responsibility, and their inability to escape the political pressure frequently brought to bear by local officials and regional militarists. Such pressure is seldom exercised upon a foreign administrator.

While the administrative excellency of the Customs service is frequently highly praised, it nevertheless appears that fifteen per cent of the gross revenue is retained for operating the revenue service; and that, furthermore, the Chinese Government does not get the benefit of the considerable amounts received yearly in the form of fines. No detailed account of the manner in which revenue retained for operating expenses is expended has ever been published, nor an account of the receipts and expenditures with regard to the Customs' share of tonnage dues and fines.[12]

At the Washington Conference the Chinese delegation made it clear that they expected more Chinese officials to be placed in the Customs service and trained for positions of responsibility, and recently articles which have appeared in the Chinese press have called for the complete termination of foreign administration of the Customs service, but there is as yet no indication that the leaders of the Nationalist Government share the latter point of view.

EXTRATERRITORIAL JURISDICTION IN CHINA

Extraterritoriality represents the third outstanding issue between China and the foreign powers. Expressed in simple terms, it is the principle by which "the foreign resident in China is subject to no provision of the law of China, either as to his person or to his property (except that in the tenure of land the *lex loci* must apply), but at all times and in all places is entitled to the protection of his own national law administered by his own national officials."[13]

Extraterritoriality in China originated after the "Opium War." Prior to that time there had been frequent cases of friction between the foreigners and the Chinese. The local officials, who were held responsible by their superiors for the good conduct of the foreigners, insisted, and in some cases in a very energetic manner, that the foreign merchants and traders should conform to prescribed regulations and respect China's territorial jurisdiction. Foreigners on the other hand were unwilling to yield to laws which in many respects they regarded as cruel and unreasonable, or to courts in whose administration they had little confidence. There was an obvious discrepancy between Occidental and Oriental interpretations of the law of nations, as well as in interpretations of municipal law. The conditions prevailing in China prior to the establishment of extraterritoriality are described in *The Trade and Administration of the Chinese Empire*, by H. B. Morse, in the following manner:

> "In the earliest times the traveller was protected by no law. . . . When the West first met the East on equal terms at shorter range than a lance's length, it was found that their laws were incompatible. . . . At first the natural assumption was that the traveller carried his law with him, in so far as he was entitled to the protection of any law; but by degrees, in the history of those countries whose government is based on law and not on the will of the governors, law became paramount, and the law of the locality was never set aside to pleasure a chance visitor. . . . The incompatibility of laws based on diverse civilizations is nowhere more marked than in China."

The very different interpretation held by the governing Manchu class at that time, as set forth by the Confucian commentator, Su Tung-po, presents a marked contrast:

> "The barbarians are like beasts, and not to be ruled on the same principle as citizens. Were any one to attempt controlling them by great maxims of reason, it would tend to nothing but

12. Willoughby, W. W., *Foreign Rights and Interests in China*, Vol. II, p. 775. According to *The Collection and Disposal of the Maritime and Native Customs Revenue since the Revolution of 1911*, by Stanley F. Wright, p. 37, the Chinese Government authorized a grant of Hk. Tls. 7,700,000 ($5,544,000) for yearly office allowance beginning July 1, 1926.

13. Morse, H. B., *The Trade and Administration of China*, p. 185.

confusion. The ancient kings well understood this, and accordingly ruled barbarians by misrule: therefore, to rule barbarians by misrule is the true and best way of ruling them."[14]

The modern Chinese interpretation of the situation prior to 1842 has been indicated by so able a student of international affairs as Dr. Wellington Koo in the following manner:

"A want of regard for Chinese laws characterized the foreigners who went to China in the seventeenth and eighteenth centuries. They were either adventurers or desperate characters, and, with the exception of a few missionaries, they were all animated by the sole desire to seek fortunes in a new land."[15]

DEVELOPMENT OF EXTRATERRITORIAL RIGHTS

The principal of unilateral extraterritoriality had its legalized beginnings in the General Regulations of Trade of 1843, supplementary to the Nanking Treaty of 1842, and the next year it was given more complete definition and precision in the Treaty of 1844 between the United States and China. Later treaties and regulations drawn up in 1858, 1865, 1876, and 1880 have widened foreign rights and rendered a number of these principles more explicit. It should be noted that these treaties created rights, that they did not extend rights which had another origin, and that the whole body of extraterritorial rights which has existed in China for three quarters of a century owes its legal existence to concessions made by China in response to the demands made by the Western Powers.

From the beginning the Chinese insisted upon their sovereign territorial rights of jurisdiction, and yielded to the demands for extraterritorial rights only when compelled to do so. However, in regard to disputes between foreigners only, China apparently made less effort to assert jurisdiction. This is in keeping with the Chinese practice of settling disputes so far as possible out of court, and it may be assumed that for this reason China was willing for purely foreign controversies to be settled according to any rules the foreigners saw fit to adopt. It is evident that the Chinese Government during the early nineteenth century did not foresee the time when there would be so many thousands of foreigners living in the Treaty Ports and other places opened to them that their extraterritorial status would be so serious a matter as it now is. Being today fully aware of the restrictions on China's sovereignty imposed by the grant of extraterritorial rights, the Chinese take the position that with the introduction of modern Chinese courts extraterritoriality "has no logical or moral argument to uphold it," and that the foreign powers should therefore immediately, or within a stated period, renounce their privileges.

NON-EXTRATERRITORIAL POWERS IN CHINA

A number of countries with which China has concluded treaties in recent years do not possess extraterritorial rights. A treaty with Chile in 1915 makes no provision for extraterritoriality. Bolivia in 1919 agreed that the most-favored-nation clause in her treaty with China did not imply extraterritorial privileges, and Persia during the next year agreed that "in all civil and criminal cases to which Persian nationals are parties, they shall be subject to Chinese law and jurisdiction." Germany, Austria and Hungary lost their extraterritorial rights when China in 1917 declared war on the Central Powers. Recognition of the termination was secured by the Sino-German Agreement of May 20, 1921, and the Sino-Austrian treaty of October 19, 1925, respectively. Russia, likewise, by the terms of the Sino-Russian Agreement of May 31, 1924, renounced her extraterritorial privileges. In May of this year a Treaty of Amity and Commerce was signed with Poland which is equal and reciprocal in nature and makes no provision for extraterritoriality. The citizens of states which have been formed or extended out of the dismemberment of Russia and Austria, that is to say, Estonia, Livonia, Lithuania, Hungary, Czechoslovakia, Jugoslavia and Rumania, are also under Chinese jurisdiction.

14. Willoughby, W. W., *Foreign Rights and Interests in China*, Vol. II, p. 551.

15. *Ibid.*, p. 553.

PRACTICE OF EXTRA-TERRITORIALITY IN CHINA

Under the aegis of extraterritoriality foreign nationals are exempt from the judicial process of local Chinese tribunals, from liability of search and from Chinese law. The laws applicable to foreign residents follow the nationality of the person and are administered by foreign consular officials or courts. Certain minor exceptions occur in case of rights of realty and also in local laws and municipal ordinances of the Chinese Government. Tribunals having jurisdiction over mixed cases between a Chinese defendant and a foreign plaintiff are known as Mixed Courts, a foreign assessor being permitted to attend trials in such courts, which are presided over by a Chinese judge. The rights surrendered by China are only those expressly granted by treaty. They relate only to the tribunals in which certain classes of civil and criminal suits may be prosecuted and to the law which is to be applied in their adjudication.

Through the operation of the provisions of extraterritoriality certain practices have been established, sometimes going even beyond the stipulated rights, as in the case of foreign post-offices (now abolished) and radio stations, police boxes or stations such as have been established by Japan in Manchuria, and the maintenance of foreign troops in China. The legation guards at Peking, the armed forces at Tientsin, the Allied guards on the Peking-Mukden Railway are examples of authorized troop provisions, but the maintenance of Japanese railway guards along the South Manchuria Railway and the Shantung Railway after the World War were unauthorized by treaty.[16]

In regard to jurisdiction, the situation in relation to the extraterritorial provisions of the treaties may be summarized as follows:

1. Controversies in which no foreigners are involved are tried in Chinese courts according to Chinese law. (Cases before the Mixed Courts are an exception to this general rule.)

2. Controversies between two or more nationals of the same treaty power are tried in the consular courts or other courts of that power, and the law applied is that of the power concerned.

3. Controversies between nationals of different treaty powers are determined, not by Chinese Courts, but by the authorities and the laws of the countries concerned, and according to agreement between these countries.

4. Controversies between nationals of non-treaty powers and nationals of treaty powers, wherein the latter are defendants, are determined according to arrangement between the powers concerned. In suits in which the non-treaty power nationals are defendants, jurisdiction is in the Chinese courts.

5. Controversies in which all the parties are non-treaty power nationals or in which non-treaty power nationals appear as plaintiff or complainants against Chinese defendants are settled in Chinese tribunals under Chinese law.

6. Controversies between Chinese and nationals of treaty powers are determined by the tribunals of the defendant, and the law applied is that of the country of the defendant.

7. Chinese police officials may arrest foreigners, but must turn over treaty-power nationals to the proper authorities of their own nationality or of a country of which they are proteges.[17]

CHINA'S OBJECTIONS TO THE SYSTEM

The objections raised by China to extraterritoriality are too well known to need more than a general review. The primary objection relates to extraterritorial jurisdiction which from the Chinese point of view constitutes a derogation and an infringement of Chinese sovereignty. Consular judges are found unsatisfactory in view of their lack in most cases of legal and judicial training, and the attempt to combine consular and judicial functions violates the generally accepted principle of the separation of administrative and judicial functions. Frequent charges have been made of the maladministration of justice because of this dual role, and of its operation in favor of foreign nationals. The multiplicity of courts and diversity of laws created by so many nationalities give rise to evils of judicial uncertainty and disparity of judgment and punishment. The consular jurisdiction is personal and the consular or extraterritorial courts lack control over plaintiffs and witnesses who are not of the same nationality as the defendant.

16. *Ibid.*, p. 590, *et seq.*

17. Hornbeck, S. K., *China Today: Political*, p. 457.

The remoteness of some of the extraterritorial courts from the scene of the crime, as in the case of crimes committed in the interior, greatly hampers the immediate, efficient and fair administration of justice.

Foreign immunity to Chinese regulations in regard to traffic, taxation and the press has constituted a source of friction. This has been further increased by the irregular extension, under extraterritorial power, of protection by foreign firms and individuals to Chinese firms and individuals who wish to remove themselves or their interests from the jurisdiction of Chinese law. A Chinese criminal harbored on foreign premises cannot be arrested under this system by the Chinese authorities until they have first obtained the consent of the proper consular authorities.

FOREIGN OBJECTIONS TO EXTRATERRITORIALITY

On the other hand there are certain objections on the part of foreigners to the extraterritorial system which are worthy of mention, although they do not yet outweigh the objections of a larger group opposed to its abolition. In the case of a lawsuit in the interior of China, the foreigner who wishes to settle the matter in court must go to great expense, delay and inconvenience to carry the matter to the nearest consular court, far removed from the spot. Appeals from judgments of foreign courts must be taken to courts beyond the confines of China, again creating expense and inconvenience. In cases involving other foreigners it is often impossible for the courts to bring to justice persons who are beyond their jurisdiction.

One other aspect of the extraterritorial system deserves special mention. So long as foreigners through its operation are removed from Chinese control, and opportunity is thus offered for local friction, it is the policy of China not to increase its responsibilities by permitting foreign trade and residence, except for the missionaries, away from the Treaty Ports where supervision is easily exercised. Accordingly there is little prospect that while the system continues China will open up her entire territory to full foreign residence and unrestricted commercial intercourse. To the foreign nations which desire to increase their commerce and other intercourse with China, this would seem a fairly heavy price to pay for the extraterritorial privileges they enjoy.

CHINESE PROPOSALS FOR REFORM

Fear of the transition period from the present extraterritorial system to the establishment of an adequate Chinese legal and judicial system has been the chief factor which has delayed the western powers in granting to China the abolition of extraterritoriality. They have, however, expressed their definite desire to abolish the system as soon as China is prepared and willing to protect the lives and property of foreigners in her midst. As early as 1902, in the abortive Mackay Treaty between China and Great Britain, and in the similar treaties concluded with the United States and Japan the following year, and with Sweden in 1908, the powers definitely stated that they would relinquish their extraterritorial rights when judicial reforms had been accomplished.

These provisions were conditioned upon ratification by the other treaty powers and, therefore, as in the case of tariff autonomy, were never carried into effect.

In 1919 the Chinese representatives at Versailles unsuccessfully presented a request to the Peace Conference for the termination of extraterritoriality, but it was rejected as being beyond the scope of the Conference. In 1922, again, the Chinese delegates to the Washington Conference pressed their claim for the abolition of extraterritoriality, and were successful only to the point of securing from the nine powers concerned an agreement to appoint a Commission "to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the governments of the several powers before named their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China, and to assist and further the efforts

of the Chinese government to effect such legislation and judicial reforms as would warrant the several powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality."

The Commission on Extraterritoriality met in China in January, 1926, and after an investigation which lasted nine months a unanimous report was presented which has been divided into four parts as follows:

Part I. The present practice of extraterritoriality in China.

Part II. The laws and judicial system of China.

Part III. The administration of justice in China.

Part IV. Recommendations.

The Chinese member of the Commission signed the report with reservations concerning Parts I, II and III.

REPORT OF THE COMMISSION ON EXTRATERRITORIALITY

On the whole the report is unfavorable to the Chinese claim for abolition. The Commissioners, who made a number of recommendations, were of the opinion that "when these recommendations shall have been reasonably complied with, the several powers would be warranted in relinquishing extraterritoriality." The preface to these recommendations also stated:

> "It is understood that, upon the relinquishment of extraterritoriality, the nationals of the Powers concerned will enjoy freedom of residence and trade and civil rights in all parts of China in accordance with the general practice in intercourse among nations upon a fair and equitable basis."

The recommendations may be summarized as follows:[17a]

1. The administration of justice should be protected from military interference.
2. The Chinese Government should adopt a program for legal and judicial reform, including measures to remedy the criticisms advanced by the Commission; the codification of the civil and commercial law and revision of the criminal code, the establishment and maintenance of a uniform system of legislation, the extension of modern courts and prisons.
3. After the principal items of this program are carried out, the powers concerned might consider the abolition of extraterritoriality by a progressive scheme.
4. Pending this abolition, the powers should make certain modifications in the practice of extraterritoriality, including the use as far as practicable of Chinese law in the extraterritorial courts. The trial of mixed cases as a general rule before the modern Chinese courts, the reorganization of the special mixed courts to accord more with the modern Chinese judicial system, the correction of abuses arising from extension of extraterritorial powers to include certain Chinese persons and interests, and arrangements between the Chinese authorities and the powers for judicial assistance in such matters as the execution of judgments, summonses and warrants.

Evidence of China's sincerity in the attempt to bring its legal system as far as possible into accord with the laws and practices of other lands is found in the work of the Law Codification Commission which has been sitting since 1914. The main work of the Commission is the investigation of local customs and usages and revision of the draft codes prepared towards the end of the Manchu regime, *viz.*, the criminal, civil, commercial and procedural (civil and criminal) codes. The Penal Procedure and Civil Procedure Codes, as revised by the Commission, were promulgated and put into force in 1921 and 1922. The Revised Penal Code awaits sanction. The following parts of the civil and commercial legislation have been completed or are nearing completion:[18]

Civil Code:

- BOOK I. General Provisions. Text completed in 223 articles, published in Chinese, French and English and sent to the Ministry of Justice for publication.
- BOOK II. Law of Obligations. Published in Chinese and French.
- BOOK III. Property Rights.
- BOOK IV. Family Law.
- BOOK V. Law of Inheritance. Revision proceeding.

Commercial Code:

- BOOK I. General Regulations.
- BOOK II. Laws relating to Business Transactions.
- BOOK III. Company Law.
- BOOK IV. Maritime Law.

Law on Negotiable Instruments. Draft completed, published in English and French, January, 1926.

Law governing Compulsory Education in Civil cases.

Law on Bankruptcy.

17a. *Problems of the Pacific*, (Proceedings Second Conference Institute of Pacific Relations, 1927), p. 84.

18. *China Year Book, 1928*, p. 411.

SUMMARY

As stated above, one of the major criticisms of the Extraterritorial Commission has had to do with the power exercised by the military authorities over the courts, and over the administration of the government. The speed with which the treaty power governments will forego their extraterritorial rights, therefore, depends very much upon the elimination of the militarists and upon the effective authority of the government in power. The unification of China so far achieved by the Nationalists' administration gives added weight to the statements issued today by the Nanking Government, inasmuch as this government represents the whole of China more effectively than any government set up in China since the Republic began.

While the treaty powers individually and sometimes collectively, as in the case of the Washington Conference, the Special Tariff Conference, and the Commission on Extraterritoriality, have made much profession of their desire to help China, it is evident from the foregoing that when it came to action either they have too often failed to agree, or else new obstacles have arisen in China which have made it impossible for them to make their wishes really effective. Up to the spring of 1926, therefore, virtually nothing conclusive had been accomplished in reference to the general program of treaty revision. Chinese political opinion, however, had been growing more articulate, and the demand for treaty revision, both in the north and the south, more insistent. The more radical Chinese today demand summary and immediate abrogation of the old treaties, and the more conservative advise that revision be accomplished by degrees according to a fixed plan, but all are agreed that the change must come soon. The steps toward revision taken during the past two years by the governments in China, north and south, may now be examined. As between the two, the powers officially have endeavored to steer a course of strict impartiality, and while dealing constantly with each through local officials to refrain from extending formal recognition to either.

RECENT PROGRESS IN TREATY REVISION

In April, 1926, the Provisional Government at Peking broke down completely and for several weeks Peking was without a government. The device of a Regency Cabinet was finally employed in order to sustain the fiction of constitutional continuity, but it was poorly supported and by October showed definite signs of disintegration. Meanwhile in the south the Nationalist armies were moving northward from Canton and rapidly extending their control over the provinces south of the Yangtze.

In the matter of foreign policy the Peking Government announced its intention to respect its obligations under the treaties, but to seek revision of the unequal provisions "as rapidly as possible" by negotiation. The Nationalists on the other hand had announced their intention to abrogate all unequal treaties and called for immediate revision from all the powers. As already mentioned, while the Tariff Conference was still gathered in Peking, the Nationalists had announced that they would not recognize any agreement concluded between the Peking Government and the foreign powers. This attitude was given more concrete expression in October and November of 1926 when the government at Canton ordered the collection of the 2½ per cent import surtax on ordinary goods and 5 per cent on luxuries, as contemplated by the Washington Conference. The powers protested, but with no effect.

NEW POLICY INTRODUCED BY GREAT BRITAIN

On December 18, 1926, Great Britain issued a Memorandum to the signatories of the Washington Nine-Power Pact proposing that the powers agree to an immediate and unconditional grant of the 2½ per cent surtax on ordinary imported goods and 5 per cent on luxuries, thus providing "a basis for regularizing the position at Canton." The Memorandum also proposed that the powers declare their readiness to grant China complete tariff autonomy as soon as a new National Tariff Law had been determined, and offered to satisfy Chinese demands by promising that in order to eliminate foreign

supervision of the surtax revenue the funds need not necessarily be used for the securing of unsecured obligations; that they might be deposited in the Chinese banks if the Chinese so decided; and that though the Customs would collect the surtax the funds would be turned over to the authorities chosen by the Chinese.

It is significant, too, that Article 15 of this Memorandum contemplated independent action, in contrast to the united action pledged in Article 7 of the Washington Nine-Power Pact.

In addition to the provisions relating to tariff, the Memorandum proposed that certain recommendations in the Report of the Commission on Extraterritoriality and certain other reforms not covered by that Commission's report, but falling under the general heading of Extraterritoriality, be carried into effect without great delay.

Great Britain in short proposed that the powers should abandon the policy current at that time of ineffective protest over minor matters and hold themselves ready "to consider in a sympathetic spirit any reasonable proposals that Chinese authorities wherever situated may make, even if contrary to strict interpretation of Treaty rights, in return for fair and considerate treatment of foreign interests by them . . . . without waiting for or insisting on the prior establishment of a strong Central Government."

BRITISH PROPOSALS OF JANUARY, 1927

In accordance with this policy the following definite proposals were communicated by Great Britain to the Chinese authorities at Peking and Hankow on January 27, 1927:

> "1. His Majesty's Government are prepared to recognize the modern Chinese Law Courts as competent Courts for cases brought by British plaintiffs or complainants, and to waive the right of attendance of a British representative at the hearing of such cases.
>
> "2. His Majesty's Government are prepared to recognize the validity of a reasonable Chinese Nationality Law.
>
> "3. His Majesty's Government are prepared to apply as far as practicable in the British Courts in China the modern Chinese Civil and Commercial Codes—apart from procedure Codes and those affecting personal status—and duly enacted subordinate legislation as and when such laws and regulations are promulgated and enforced in Chinese Courts and on Chinese citizens throughout China.
>
> "4. His Majesty's Government are prepared to make British subjects in China liable to pay such regular and legal Chinese taxation not involving discrimination against British subjects or British goods, as is in fact imposed on and paid by Chinese citizens throughout China.
>
> "5. His Majesty's Government are prepared, as soon as a revised Chinese Penal Code is promulgated and applied in Chinese Courts, to consider its application in British Courts in China.
>
> "6. His Majesty's Government are prepared to discuss and enter into arrangements according to particular circumstances at each port concerned for the modification of Municipal Administration of British Concessions, so as to bring them into line with the administrations of Special Chinese Administrations set up in former Concessions, or for their amalgamation with former Concession areas to the Chinese authorities.
>
> "7. His Majesty's Government are prepared to accept the principle that British missionaries should no longer claim the right to purchase land in the interior, that Chinese converts should look to Chinese Law and not to Treaties for protection, and that missionary education and medical institutions will conform to Chinese laws and regulations applying to similar Chinese institutions."

POLICIES ADOPTED BY OTHER POWERS

On January 26, 1927, the United States, through its Secretary of State, issued a statement indirectly answering the British Memorandum which until the last few months has been considered the final word on American policy in China. It did not propose dealing with regional authorities to the extent contemplated in the British Memorandum, but called for a central authority representative of the whole of China. The significant paragraph reads as follows:

> "The Government of the United States was ready then and is ready now to continue the negotiations on the entire subject of the tariff and extraterritoriality or to take up negotiations on behalf of the United States alone. The only question is with whom it shall negotiate. As I have said heretofore, if China can agree upon the appointment of delegates representing the authorities or the people of the country we are prepared to negotiate such a treaty. How-

ever, existing treaties which were ratified by the Senate of the United States cannot be abrogated by the President but must be superseded by new treaties negotiated with somebody representing China and subsequently ratified by the Senate of the United States."

Japanese policy at this time, as outlined by the Foreign Minister to the Imperial Diet on January 16, 1927, was expressed in even more general terms:

"1. Respect the sovereignty and territorial integrity of China and scrupulously avoid all interference in her domestic strife.

"2. Promote the solidarity and economic *rapprochement* between the two nations.

"3. Entertain sympathetically and helpfully the just aspirations of the Chinese people and cooperate in efforts of realization of such aspirations.

"4. Maintain an attitude of patience and toleration in the present situation in China and at the same time protect Japan's legitimate and essential rights and interests by all reasonable means at the disposal of the Government."

French opinion was inclined to be conservative, preferring to adopt a wait-and-see policy in China, whereas Belgium and Italy tended to favor the British proposals.

SINO-BELGIAN TREATY A TEST CASE

During 1926 the Peking Government made a number of moves towards treaty revision through the abrogation of treaties whose revision dates had expired. The case of Belgium which came up first was in many respects a test case.

On April 16, 1926, the Chinese Government notified Belgium of its desire to terminate the Sino-Belgian Treaty of October 27, 1866, on October 27, 1926, and to commence negotiations at the earliest possible date for the conclusion of a new treaty. The Belgian Government at first disagreed with the Chinese interpretation of Article 46, quoted below, on which the Chinese Government had based its right to call for a revision, contending that the right to demand revision belonged to Belgium alone and declining to negotiate until after the work of the Customs Conference and the Extraterritoriality Commission had been completed.

Article 46 reads as follows:[19]

"Should the Government of His Majesty the King of the Belgians judge it necessary in the future to modify certain clauses of the present treaty, it shall be free to open negotiations to this end after an interval of ten years from the date of the exchange of ratifications; but six months before the expiration of the ten-year period, it must officially inform the Government of His Majesty the Emperor of China of its intention to make such modifications and in what they will consist. In the absence of this official announcement the treaty shall remain in force without change for a new term of ten years and so on from ten years to ten years."

The Chinese Government declined to recognize this position and after lengthy negotiations the two governments finally agreed to terminate the treaty and adopt in its stead a provisional *modus vivendi*, reciprocal in nature, which should continue in force until the new treaty came into effect. The Chinese Government suggested that negotiations be completed within six months from October 27, 1926, provision being made for a reconsideration of the *modus vivendi* if upon the expiration of that period the treaty be not completed, but this proposal was not acceptable to the Belgian Government. It proposed that if the treaty had not been completed within six months the *modus vivendi* was to be extended for another six months upon the request of either party three months in advance, "and so on from six months to six months until the coming into force of the new treaty."

Readily foreseeing the possibilities inherent in such a proposition the Chinese Government countered this suggestion with a new proposal to the effect that on the expiration of the six months' period, the *modus vivendi* could be extended by mutual agreement and might be terminated by three months' notice in advance. Obviously this made possible a situation wherein the relations between the two countries might be left at the end of the six months without a treaty and without the *modus vivendi*.

The Belgian Government on November 5, 1926, definitely rejected the latter proposal and, repudiating the results of the negotiations up to that time, announced its intention to bring the question of the interpretation of Article 46 before the Permanent Court of International Justice, suggesting that the two governments agree upon the terms of a *compromis*. At the

19. *American Journal of International Law*, April, 1927, p. 289.

same time the Belgian Government engaged itself to the effect that as soon as the United States, Great Britain, France or Japan should have concluded a new treaty with China, Belgium would accept in the matter of jurisdiction the same dispositions as might be agreed upon between China and any one of those powers.

CHINA ABROGATES BELGIAN TREATY

The Chinese Government protested that to accept such an expression in place of a definite period for the conclusion of the proposed new treaty would create a vicious circle which would virtually destroy all hope of China's being able to bring into existence the new treaties so essential to the common interests of China and the foreign powers.

The official statement of the Chinese Government then concluded that since the dispute was merely over the fixing of a definite period for the conclusion of the new treaty, and not the question of its termination on October 27, to which the Belgian Government had already agreed, it felt compelled to conform to the notice given to Belgium in April and declare the treaty terminated on October 27, 1926.

A Presidential order to the Chinese Minister of Foreign Affairs, dated November 6, 1926, formally announced that, the treaty having expired on October 27, 1926 it ceased from that date to be effective.

During the course of further diplomatic exchanges the Belgian Government again asked China to jointly submit the dispute over the interpretation of Article 46 to the Permanent Court. To this request the Chinese Government replied that the point at issue between the two governments was not the technical interpretation of Article 46, but the application of the principle of equality of treatment in the relations between them. It argued that the issue was political in character and could not be made the subject of a judicial inquiry. The Chinese Government declared, however, that it would be willing at any time to resume negotiations with the Belgian Government.

BELGIUM CARRIES CASE TO THE WORLD COURT

Being unable to obtain Chinese consent to a joint *compromis*, Belgium on November 25, 1926, addressed a unilateral application to the Court, reviewing the facts and raising the question of China's right to denounce the treaty of 1865 under Article 46. The Belgian petition prayed the Court to declare and judge, either in the absence or the presence of the Chinese Government, that China's unilateral denunciation of the treaty of 1865 was not justified; pending such decision to indicate the provisions and measures to be taken for the safeguarding of Belgian rights recognized by the treaty.

Belgium's application was based on the fact that both Belgium and China had agreed to accept the jurisdiction of the court in the classes of legal disputes set forth in Article 36 of the Statute:[20]

a. The interpretation of a treaty.
b. Any question of International Law.
c. The existence of any fact which, if established, would constitute a breach of an international obligation.
d. The nature and extent of the reparation to be made for the breach of an international obligation.

This article also provides that:

> In the event of a dispute as to whether the court has jurisdiction in these cases, the matter shall be settled by a decision of the court.

On November 26, China was notified by the Registrar of the Court of the filing of the Belgian application and subsequently of the filing of the Belgian memorial. The court set March 16, 1927 as the date for China's first reply, and June 17 for her second reply, and on January 8, 1927 the President of the Court, in accordance with Article 41 of the Statute, ordered provisional measures for the protection of Belgian subjects, property and rights, based more or less upon the treaty of 1865. Shortly thereafter negotiations were reopened between the two countries for the conclusion of a new treaty, and Belgium asked for a continuance of the case and the withdrawal of the protective measures ordered by the court. These were revoked on February 15, 1927.[21]

20. *Ibid.*, p. 293.
21. Meanwhile, the Chinese Government has not submitted its case to the court, since the negotiations between the two countries are still pending, and Belgium has on several occasions sought and obtained an extension of the time limit in which China might present its case. The last extension set February 15, 1929 as the time limit for the new Nationalist Government of China to make its first reply.

Negotiations between Belgium and China for revision of the treaty began on January 17, 1927, but no treaty was concluded prior to the downfall of Peking in June, 1928. During the interim the status of Belgian nationals in China was governed by the following provisions which were promulgated by the Chinese Government:

1. Due protection shall be given to the persons of Belgian subjects, including Belgian missionaries, and their property and ships in accordance with the rules of international law.
2. The tariff rates of Customs duties for the time being in force which are applicable to the nationals of other countries will be applied to merchandise imported into China from Belgium or by Belgian subjects, or exported from China to Belgium.
3. Cases, civil and criminal, in which Belgian subjects are concerned will be tried by Modern Courts only, with the right of appeal, Belgian subjects being allowed to engage lawyers and interpreters of Belgian or other nationality who have been duly recognized by the court.[22]

Inasmuch as it has accepted these provisions Belgium no longer has extraterritorial rights, and therefore no longer ranks as a "treaty power."

ABROGATION OF SINO-SPANISH TREATY OF 1864

On November 10, 1926 the Chinese Government communicated to Spain its intention to terminate the Treaty of Amity, Commerce and Navigation concluded between China and Spain on October 10, 1864, in accordance with Article 23, providing that six months notice should be given before the end of the decennial period when revision might be considered. It was the view of the Chinese Government that the treaty should expire on May 10, 1927. The Spanish Government took the position, however, that according to the Spanish text the treaty did not expire until November 10, 1927. The Chinese Government thereupon waived its contention and agreed to consider the treaty as valid until November 10, 1927.[23]

Spain at first attempted to distinguish between the tariff and commercial articles of the treaty and those relating to other matters but the Chinese Government declared such a differentiation unfeasible and "held the view that it was most desirable to terminate the entire treaty and replace it with a new agreement."

Negotiations opened on August 8, 1927 and the Chinese draft of a new treaty was handed to the Spanish Minister on August 18. No new treaty had been completed by November 10, 1927 on which date the Chinese Government formally terminated the old treaty, and at the same time "instructed the local authorities to extend full and due protection to the Spanish Legation, Consulates, and the persons and property of Spanish nationals in China, in accordance with the rules of international law and usage, and directed the Ministries concerned to make arrangements in conformity with international practice for their favorable treatment."

On November 14 and November 17 Spain sent notes of protest to the Chinese Foreign Office in Peking declaring that China had no right to terminate the whole treaty, and further that Spain had been promised, pending the signature of the new treaty, the "same advantages and favorable treatment granted to the other nations with which China is [was] . . . . negotiating treaties."

The Chinese Government replied on November 25 reminding the Spanish Government of its earlier agreement to negotiate an entirely new treaty, not merely that part relating to the tariff and commercial clauses, and protested that it had not undertaken to grant to Spain most-favored-nation treatment either in its most ample sense or in the usual sense provided for in treaties of commerce, since the scope of the clause had to be discussed in the negotiations for a new treaty. As to the treatment of Spanish nationals, China denied that it had made any promise, inasmuch as the situation which had arisen concerning a *modus vivendi* had not been anticipated and it was "therefore obvious that no promise in this connection could have been made." The note concluded with an expression of hope on the part of China that negotiations might proceed forthwith for the conclusion of a new treaty on a fair and equitable basis, but here again no treaty was concluded before the Nationalists took over the reins of government.

22. *China Year Book, 1928*, p. 786.
23. *Ibid.*, p. 1402.

On December 4, Nanking, in spite of earlier statements that it would not recognize the actions or negotiations of the Peking Government concerning treaty revision, issued a series of regulations for the treatment of Spanish subjects. These provided that they should be subject to Chinese law and in general should receive the treatment given to nationals of non-treaty powers. Nanking thus indicated acceptance of Peking's action in cancelling the treaty.

REVISION OF JAPANESE TREATY OF 1896

China's note to Japan on October 20, 1926 proposed fundamental revision of the Treaties of October 20, 1896, and of July 21, 1896, and of the supplementary Treaty of Commerce and Navigation of October, 1903. The note stated in part:[24]

> "It is provided in the Treaty that revision may be effected within six months after the expiration of the decennial period. The Chinese Government sincerely hope that negotiations will be started promptly so that a new treaty may be concluded within the six months period. If, however, on the expiration of the said period no new treaty is completed, the Chinese Government will be confronted with the necessity of determining and declaring its attitude *vis-à-vis* the existing Treaties. Accordingly, the Chinese Government wish to reserve all their rights in this regard."

To this proposal from China the Japanese Government repled on November 10, 1926 calling to the attention of China the text of Article 26 of Japan's Treaty of 1896 which reads:[25]

> "Article XXVI. It is agreed that either of the High Contracting Parties may demand a revision of the Tariffs and of the Commercial Articles of this Treaty at the end of the ten years from the date of the exchange of the ratifications; but if no such demand be made on either side and no such revision be effected within six months after the end of the first ten years, then the Treaty and Tariffs in their present form shall remain in force for ten years more, reckoned from the end of the preceding ten years, and so it shall be at the end of each successive period of ten years."

Inasmuch as the Chinese note called for a fundamental revision not only of the tariff and commercial articles but also of the entire treaties and notes in question, the Japanese Government felt it necessary to state that "a request for such comprehensive revision is neither contemplated nor sanctioned in any of the existing stipulations between Japan and China." However, the note continued, "The Japanese Government . . . have no intention of limiting the scope of the forthcoming negotiations to the questions defined in Article 26 of the Treaty of 1896."

Definite exception was, however, taken to the statement by the Chinese Government that if the new treaty be not effected within six months, it would be compelled to define and to announce its attitude on the Treaties and that it expressly reserved all rights to which it was entitled in this regard. Concerning this the Japanese Government replied that it felt it "due to frankness to state that their acceptance of the proposal for a revision of Treaties between Japan and China is not to be construed as an acquiescence in any rights asserted in the Waichiao Pu's communication."

On this basis negotiations were opened in January, 1927. The first six months' period stipulated by Article 26 for revision expired on April 20, 1927, but by mutual agreement was five times extended up to July 20, 1928. No new treaty had been concluded when the Nationalists took Peking in June, 1928. In July, 1928 the matter of revision was taken up by the Nanking Nationalist Government. While negotiations went on the old treaties had remained in force, and no attempt was made by Peking as in the case of Spain and Belgium formally to terminate them. It has been reported that much of the difficulty experienced in the negotiations between Japan and the Peking Government was due to the fact that the Japanese were seeking an agreement which would provide low customs duties on Japanese merchandise, especially cotton piece goods, but China not unnaturally has objected to establishing a precedent which would encourage other powers to make similar moves.

24. *China Year Book, 1928*, p. 787.
25. *Ibid.*, p. 788.

PEKING ORDERS COLLECTION OF WASHINGTON SURTAXES

Definite moves toward tariff autonomy were made by Peking and by the southern Nationalist government during 1927. In the North the Chinese Government ordered the collection of the two and one-half per cent and five per cent Washington surtaxes as of February 1, 1927, and at the same time announced the abolition of *likin* and the introduction of tariff autonomy on January 1, 1929. The Foreign Ministers in Peking made a joint protest against the levying of these surtaxes and Sir Francis Aglen, the Inspector-General of Customs, refused to collect them on the ground that it was illegal to do so without the unanimous consent of the powers. He was thereupon given a year's leave of absence, which was recognized as a dismissal. The Secretary to the Inspector-General, Mr. A. H. F. Edwardes, another British subject, was appointed in his place and a Japanese subject, Mr. H. Kishimoto, was for the first time appointed to the position of Chief Secretary of Customs, the second ranking position in the service. This appointment is indicative of the close rivalry between Japan and Great Britain for a predominant position in China's trade. The new Inspector-General also refused to collect the tax. The Peking Government accordingly adopted the method of the Nationalist Government and established another customs staff under Chinese control immediately behind the Maritime Customs Administration. These officials collected the new 2½ and 5 per cent surtaxes while the regular Administration collected the customary 5 per cent *ad valorem* tax and the 2½ per cent transit tax. The revenue derived from the new taxes went chiefly into the treasuries of the militarists in control of the various regions of collection, a much smaller part being appropriated for domestic loans.

TAX ADMINISTRATION BY NATIONALISTS IN 1927

In the provinces under Nationalist control Surtax Bureaus had already been opened independently of the Customs Administration and were collecting the 2½ per cent surtax and in some cases also the five per cent luxury tax. Tax administration in the South during 1927 was very irregular, for there was no uniform policy among the factions represented by the political groups centered at Hankow, Nanking and Canton. Local commercial groups protested strenuously, often refusing to pay. Diplomatic support was sought, but the powers refrained from taking any official action, beyond the registering of protests against treaty violations. In a number of instances the taxes announced were afterwards rescinded.

PEKING AND NANKING BREAK WITH RUSSIA

In June, 1927, Chang Tso-lin took over the Peking Government and proclaimed himself Dictator. Although this new government was not recognized by the treaty powers, its relations with the foreign representatives were generally amicable. Soviet Russia was the one government which did recognize Chang Tso-lin's régime, but relations between Peking and Moscow were not friendly. It was no secret that Soviet Russia was supporting the Nationalists and that Chang Tso-lin was hostile to what he termed "Bolshevist machinations." On April 6, 1927 the Dal Bank, the offices of the Chinese Eastern Railway, the barracks and the office of the Military Attaché in the Soviet Embassy premises were raided by the Peking police and troops from Chang Tso-lin's army, a number of Chinese and Russian Communists were arrested, and much inflammatory literature was confiscated. Permission to carry out the raid was granted by the Dean of the Diplomatic Corps, this being necessary because the premises were within the Legation Quarter. This permission was exceeded, however, when the police entered the offices of the Soviet Military Attaché.

The Chinese Foreign Office succeeded by strategy in registering its protest first, charging that the conduct of the Soviet Embassy in permitting revolutionaries to hold meetings and foment conspiracies constituted a violation of international practice and of the Sino-Soviet Agreement and endangered the welfare of the State.

Protests lodged by the Soviet authorities characterized Chinese actions as "an unprecedented breach of elementary principles of

international law." The Soviet Government presented four demands and announced that until these were satisfied it would recall the Soviet Chargé d'Affaires together with the whole staff of the Embassy, leaving only the personnel for performing consular functions. Thus the legal ties between the two countries were not totally destroyed. Russia has not pressed the case since, and the Peking Government has apparently made no move to comply with the Soviet demands. After the raid in Peking the Soviet Government openly declared its affiliation with the Nationalist Government, although in the absence of formal treaty relations this was unofficial in nature.

The relations between Soviet Russia and the Nationalists, which had been most cordial during 1926 and the early part of 1927, also suffered under the strain of the Peking raid. The documentary evidence of Soviet Russia's promotion of Communism in China, obtained in the Peking raid, helped to widen the rift which had already developed in the Nationalist Party over the extent of Communist control. This break was further augmented by additional exposures of Soviet Communist activities in July, 1927, in consequence of which the government at Hankow, dominated by Communists, broke down completely, and the Russian advisers were forced to leave China. A new Nationalist Government was soon after established at Nanking. In December, this Government, following the suppression of a Communist uprising at Canton, formally severed relations with Soviet Russia and closed all Soviet Consulates in Nationalist territory.

NANKING BECOMES NEW CENTER OF POWER

Early in the year 1928, Nationalist territory comprised sixteen of China's twenty-two provinces and produced 70 per cent of the national customs revenues. Despite this fact the headquarters of the Customs Administration remained at Peking and any surplus left after payment of interest on national debts was released to Chang Tso-lin's Peking Government which used the money to fight the South.

Mr. Edwardes, the Acting Inspector-General, under instructions from the Peking Government, made a trip to the South in February, 1928, with the announced purpose of settling all the outstanding problems regarding the administration of the customs. He recommended that, as a preliminary toward the enforcement of a transitory tariff and a statutory tariff, the 2½ per cent surtax then being collected throughout Nationalist territory be legalized and collected at the Customs Houses; and that the surplus of the increased revenues be divided between the Nanking and Peking Governments in proportion to the receipts of the Customs Houses located in the territories of the respective Governments. Nanking, however, showed no disposition to combine with Peking and demanded its full share of all receipts.

With the capture in June of Peking and Tientsin by the Nationalists and the announcement that henceforth Nanking would be the capital of China, the fiction of Peking's authority as the seat of Chinese Government could no longer be sustained. Almost immediately the powers found themselves faced with the question of deciding what attitude they would adopt toward treaty revision.

NATIONALIST GOVERNMENT TERMINATES UNEQUAL TREATIES

On July 7, 1928, the Nationalist Government through Dr. C. T. Wang, the Minister of Foreign Affairs, issued a mandate reaffirming the Government's determination to proceed immediately with the revision of all unequal treaties. Belgium and Spain had already accepted abrogation of their treaties under the Peking Government, and on April 28 Portugal was notified by both Peking and Nanking of the termination of its Treaty of 1887. Nanking further stated that if the treaty was not revised at an early date, as required, it would be denounced. Italy and Denmark were notified at once of the termination of their treaties of 1866 and 1863, respectively, and on July 11 further notes were handed to the Portuguese Minister concerning the lapse of the treaty of 1887, and to the French Minister notifying him of the intention of Nanking to terminate the three conventions of 1886, 1887, and 1895 relating to frontier trade between China and France. On July 19 the Nanking Foreign Minister in a note handed to the Japanese Consul at Nanking announced the

termination of the Japanese treaty of 1896 as of July 20. A mandate issued by the Government Council on July 8 proclaimed seven unilateral regulations as a *modus vivendi* during the interim period between the expiration of old treaties and the conclusion of new treaties between the Nationalist Government and foreign powers.

RESPONSE OF THE POWERS TO NATIONALIST DEMANDS

Denmark replied on July 16 expressing its willingness to begin new negotiations, although it did not acknowledge the right of the Nationalist Government to denounce the treaty, inasmuch as Article 26 offered opportunity for the revision of the tariff only every tenth year. Three days later the French Government in a sharp note to the Nanking Government denied the right of the Chinese Government to denounce the three instruments relating to frontier trade. On July 25, Portugal also denied China's right to denounce the entire treaty on the basis of Article 46 relating to tariff and commercial matters, but nevertheless stated that it was willing to negotiate. The Italian reply to the Nanking Government's request for revision of the treaty was made public on August 12. It contested the right of Nanking to declare the treaty null and void as of June 30, 1928, but admitted that within six months of that date the Chinese had the right to demand a revision of the tariff and commercial clauses. Italy expressed its readiness, however, to enter into negotiations for a new treaty on the basis of most-favored-nation treatment, subject to a suspensory clause providing that the new agreement should come into force only after the signatories of the Washington agreement had adjusted their diplomatic relations to the new conditions, and when Sino-Italian relations had returned to a normal basis.

The Japanese Government, however, has given less indication of a desire to conform to China's wishes. A series of notes passed between the two governments during July and August in which China in very firm phrases insisted upon its right to denounce the treaty, and Japan in hostile terms characterized the Chinese demands as "outrageous" and warned the Chinese Government that in order to protect its interests Japan might have to "employ drastic measures which it deems fit and necessary." The Japanese notes have repudiated the Chinese contention that the treaty of 1896 has expired, but have expressed willingness to negotiate for revision if China would withdraw the unilateral interim regulations, set forth in the *modus vivendi* of July 8, in its treatment of Japanese nationals. This would in effect restore the 1896 treaty. On August 28 the Nanking Government, replying to the Japanese note of August 8, stated that China when last proposing revision of the treaty had intimated that it would not be renewed and had reserved the right to determine its policy if at the end of six months revision had not taken place. This was in reply to the Japanese contention that under Article 26 the treaty had been automatically extended for a further ten years. The note also stated that no attempt had been made to put into effect the provisional regulations regarding foreign nationals. And so matters stood between the two governments when this report went to press.

TWO NEW TREATIES CONCLUDED BY NATIONALISTS

With two other powers the Nationalist Government has already concluded new treaties, equal in nature, concerning tariff and related matters. On July 24, Secretary of State Kellogg, in response to overtures made by Dr. C. C. Wu, Nationalist representative in the United States, who informed him that the Nationalist Government had decided to appoint plenipotentiary delegates for the purpose of treaty negotiation, dispatched a note to China which read in part:

> "As an earnest of the belief and the conviction that the welfare of all the peoples concerned will be promoted by the creation in China of a responsible authority which will undertake to speak to and for the nation, I am happy now to state that the American Government is ready to begin at once, through the American Minister to China, negotiation with properly accredited representatives whom the Nationalist Government may appoint, in reference to the tariff provisions of the treaties between the United States and China, with a view to concluding a new treaty in which it may be expected that full expression will be given reciprocally to the principle of National Tariff Autonomy and to the principle that the commerce of each of the contracting parties shall enjoy in the ports and the territories of the other treatment in no way discriminatory

as compared with the treatment accorded to the commerce of any other country."

On the following day the American and Chinese Governments signed a reciprocal treaty by which the United States renounced all its rights gained in past treaties relating to tariff, and recognized China's right to the principle of complete national tariff autonomy subject to the condition that each of the high contracting parties should enjoy mutual most-favored-nation treatment. The provisions of the treaty, provided it is ratified on both sides, are due to become effective on January 1, 1929, the date set by China for the enforcement of complete national tariff autonomy.

On August 17 a treaty with Germany was signed in Nanking, the terms of which were practically identical with those of the United States treaty, guaranteeing complete reciprocity in customs and similar matters and providing for the opening of negotiations as soon as possible for the conclusion of a definite trade treaty.

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